IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

GOVERNMENT APPEAL NO. 1084 OF 2001
(Old No. 2090 of 1985)

The State ...Appellant

Versus

1. Chaman La S/o Sri Narain Singh
2. Smt. Roma Devi W/o Chaman lal

Both R/o Village Laxmipur Narodi,
P.S. Vikasnagar, District Dehradun
..Opposite Parties

Dated: June 05, 2007

Sri Amit Bhatt, learend Addl. G.A. for the State
Sri Lokendra Dobhal, learned counsel for the opposite parties

HON. DHARAM VEER, J.

This appeal, under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred as **Cr.P.C.),** has been preferred by the appellant/State against the judgment and order dated 10.05.1985 passed by Additional Sessions Judge, Deharadun in Sessions Trial No.26 of 1984, State versus Chaman Lal and Smt. Roma Devi, whereby the learned Additional Sessions Judge acquitted the respondents under section 306 and 498-A I.P.C.

2. Brief facts of the case are that a written report was lodged with the P.S. Vikas Nagar by one Diwan Chand S/o Bali Ram R/o Gram Nagar, P.S. Vikas Nagar on 15.08.1983 with the allegations that the younger sister of the complainant Raj Kumari was married to Mulak Raj, who was aged 20 years and the father in law of Smt. Raj Kumari used to ill-treat her on trifle matters. The husband of the girl Raj Kumari was working in a private service in Delhi and he used to visit his house periodically whereupon the

sister of the complainant used to complaint regarding the ill-treatment of her in-laws in the absence of her husband. Annoyed by all these complaints, the father of Smt. Raj Kumari took this matter to Panchayat at Laxmipur where members of the Panchayat tried to settle down the matter between the parties but all in vain. It was alleged that the sister of the complainant came twice to her parents and all the times, she complained regarding the behaviour of her in-laws and ultimately told her brother to get her dispute settled otherwise she will commit suicide. On this, the brother of Smt. Raj Kumari wrote a letter to his brother in law and asked him to get the matter settle. In response, his brother-in-law had come to him on 14.8.1983 and tried to understand the things. He told that he was unable to do anything before his parents. He had come only for two days leave and he had no money to keep his wife at Delhi. The complainant also asked him that he should tell his parents to behave properly with his sister. At about 11.30 A.M. on 15.08.1983 his brother in-law had come to him and told him that his sister had taken some poison and her condition was serious. He at once on the tractor of Roshan took his sister to the hospital, where the doctors declared her dead. It was alleged by the complainant that his sister had committed suicide because of mal-treatment of her father-in-law and mother-in-law. On the basis of this written report Ex.Ka-1, a Chik FIR Ex.Ka.6 was prepared in P.S. Vikasnagar which was proved by P.W. –10 Jgdish Prasad. G.D. No. 13 was prepared, which is Ext.Ka-7. In this G.D. it was mentioned that since the place where the incident had taken place lies in P.S. Sahaspur, the matter would be referred to that police Station. Ext. ka-8 is the paper through

which the Police Officers of Sahaspur had stated that the place of occurrence lies in the P.S. Vikas Nagar, and so they should investigate the matter. Ultimately, the case was investigated by the Police Officers of Vikas Nagar, Ext-1 is the report which was forwarded to P.S. Sahaspur by the Christian hospital, Vikasnagar, regarding the death of Smt. Raj Kumari. A panchayatnama of the dead body was prepared vide Ext. Ka-2 which was proved by P.W.-2. The I.O. has taken the "Dibia" from the spot alongwith "Shishi" as alleged, where the Raj Kumari had vomited and prepared a Fard Ex.Ka-4. The post-mortem of the deceased was conducted by Dr. R.N. Singh on 16.10.1983 at 1:00 P.M. The I.O. also prepared a site plan i.e. Ex.Ka-13 After completing the investigation, the I.O. submitted the charge sheet Ex.Ka-14. The Judicial Magistrate I, Dehradun had committed the case to the court of Sessions against the accused/respondents under Section 306 and 498-A I.P.C. on 13.3.1984 The learend Additional Sessions Judge, Dehradun has framed the charge against the accused/respondents under Section 306 and 498-A I.P.C. on 24.7.1984. The charge was explained to the accused persons, who pleaded not guilty and claimed to be tried.

3. The prosecution in order to prove its case examined P.W.1 Diwan Chand, P.W.2 Hari Singh, P.W.3 Misri Lal, P.W.4 Damodar Dass, P.W.5 Bali Ram, P.W.6 Smt. Barfi Devi. P.W.7 Smt. Mahanti, P.W8 Mehant Ram, P.W.9 Dr. R.N. Singh, P.W.10 Jagdish Prasad, P.W.11 sri Bhupender Bahadur Singh Malara, S.I., P.W.12 Shiv Kumar, S.I.

4. Thereafter, the statement of the accused persons were recorded under Section 313 Cr.P.C. in which they have denied the allegations made against them. In the statement recorded under section 313 Cr.P.C., accused Chaman Lal has stated that he and his wife never quarreled with the deceased Raj Kumari and they have kept her with love and affection. Smt. Roma Devi has also denied the allegations and she has stated that she is innocent. She has never harassed Raj Kumari and she has never created such a circumstance due to which Raj Kumari has taken the poison and behaviour of herself and her husband was good with the deceased Raj Kumari. The accused persons in support of their case have produced the witnesses D.W.1 Banarsi and D.W. 2 Shanti Prasad.

5. After appreciating the evidence and hearing the parties, the learned Additional Sessions Judge vide his judgment and order dated 10.05.1985 has acquitted the respondents for the charge punishable under Section 306 and 498-A I.P.C. Against the said order dated 10.05.1985, the State has come up in appeal before this Court.

6. I have heard Sir Amti Bhatt, learned Additional G.A. for the State and Sri Lokendra Dobhal, learned counsel for the respondents.

7. P.W.1 examined by the State is Diwan Chand, the persons who has lodged the F.I.R. and who is the brother of the deceased also. In the examination-in-chief, he has stated that h is sister was married with Molak Raj in May, 1979. He has stated that both the respondents were harassing his sister

and they used to abuse and beat her. His brother-in-law, the husband of the Raj Kuamri was serving in Delhi and the used to come very rarely in the house. He has further stated that whenever his sister came to his house, then she had stated that her father-in-law and mother-in-law were harassing her and used to beat her. He has also stated that for settling the dispute. The Panchayat was also arranged 3-4 times at the house of the accused persons and Panchayat asked them not to harass the Raj Kumari but the accused persons never changed their habits and they continued to beat his sister. He has also stated that they had kept mum due to the respect in the society. He has further stated that his sister told him either to get her dispute settled otherwise she would commit suicide. Then he wrote a letter to the Mulak Raj, his brother-in-law. Then his brother-in-law came to his house on 14.08.1983 and told him that he is getting only Rs.300-350 salary per month and he cannot live with his wife in such an income at Delhi. He also told him that he could not say anything to his parents. On the same day nigh, Mulak Raj had gone to his house. on that day, he had asked Mulak Raj to ask his parents not to harass his sister. He has further stated that on 15.08.1983 in the day about 11-11:30 A.M., Mulak Raj has come to his house and told him that his sister has taken the poison and her condition is very bad. Then he took the tractor of Roshan Lal and with this Tractor, he had gone to the house of his sister Raj Kumari. From that he had taken his sister Raj Kumari to the hospital where the doctor had declared his sister dead. After that, he has lodged a report in the Vikasnagar Police Station of the said incident. He has proved his report Ex.Ka-1. He has further stated that

when the doctor has declared his sister dead, Chaman Lal ran away from there. He has further stated in the cross-examination that his sister had not told him the reason of the quarrel and the reason of the Marpeet. He has also stated in the cross-examination that he has arranged a Panchayat in so many times and in that Panchayat, Mahant Ram, Sohan Singh, Roop Lal and his father Bali Ram was also there. He has further stated in the cross-examination that in the Panchayat, his brother-in-law Mulak Raj had never come and he had also never called him. He has further stated in the cross-examination that he did not know whether the Raj Kumari had taken the Poison in the house or in the forest. He has also stated in the cross-examination that in the hospital, Chaman Lal and Mulak Raj were with him.

8. P.W.2 is Hari Singh. He is the formal witness. He has signed on the panchayatnama (inquest report) Ex.Ka.-2.

9. P.W.3 is the Mishri Lal. He has stated that the accused Chaman lal and Roma Devi are his neighbourer and the Raj Kumari was the wife of son of Chaman Lal and Roma Devi. He has also stated that he does not know how the Raj Kumari has died. He has further stated that he never heard the sound of the cries of Raj Kumari. This witness has not supported the prosecution case and the prosecution had declared him as a hostile witness and after that the A.D.G.C. (Criminal) was allowed to cross-examine him. When this witness was cross-examined by the defence counsel, the he has stated that Raj Kumari was living in her matrimonial house with love and

affection and he had never seen any quarrel between the Raj Kumar and his father in law and mother in law. In this way, this witness has not supported the prosecution case.

10. P.W.4 is the Damodar Dass who has stated that he and Ruma Devi belongs to the same village in the Himachal Pradesh and due to this reason he is related to Roma Devi. He has also stated that he had no knowledge that whether the Raj Kumari was harassed by the accused and he never heard anything about the dispute. This witness was also declared hostile by the prosecution and he has been cross-examined by the ADGC (Criminal) when he was cross-examined by the defence counsel, then he has stated that Raj Kumari was living there with love and affection and he had never seen any quarrel in the house. This witness has not supported the prosecution case.

11. P.W. 5 is Bali Ram who is the father of the deceased Raj Kumari. He had stated in the examination-in-chief that his daughter Raj Kumari was married with Mulak Raj in 1979. His son-in-law was serving in Delhi and his daughter was living along with his father in law and mother in law. The relations of her father in law and mother in law were cordial with her for one year and thereafter they started to abuse her and quarrel her. He has further stated that whenever his daughter used to come, then she had told him that the goat which was given by him to her daughter was killed by them and they are asking for another goat. He has further stated that when on 14.8.1983, Mulak Raj his son-in-law had come to

him, then he had asked him either to take Raj Kumari with him or drop her with Narainu and his wife. Then Mulak Raj had told him that h e had got the residential problem in Delhi and for this reason he is unable to take her with him. Next day on 15.08.1983, Mulak Raj had come to his house, then he had told that Raj Kumari has taken something and she is going to be died and he asked him to go with him. In cross-examination, he has stated that before him, his daughter was never beaten by the respondents and they have never demanded dowry from her. He has further stated that he had seen the dead body of his daughter when the dead body has come from the hospital in the house of the respondents/accused and before that he had not seen h is daughter because he was not feeling well. He has also stated that cremation of the dead body was done by the respondents/ accused. In cross-examination, he has also stated that his daughter was killed by Roma Devi. He had also stated that his daughter had not complained against anybody else except Roma Devi. He had further stated that he did not know whether the Chaman lal was used to abuse Raj Kumari or not. He had further stated that in the Panchayat, along with him, Mohan Ram and Sonu had also gone.

12. P.W.6 is Smt. Barfi Devi, who is the mother of the Raj Kumari. She had also stated that Chaman Lal and Roma Devi were misbehaving with her daughter and her son-in-law was serving in Delhi and the accused/respondents were harassing her daughter. She has further stated that the accused were demanding Rs. 10,000/- and two goats and one sheep. She had also stated that she h ad asked her

son-in-law either to take her daughter with him in Delhi or dropped her with Mehanti or Narainu, who are the father and mother of the Chaman Lal. She has further stated that on the date of the occurrence, in the morning at 6 o'clock, she had gone to the house of her son-in-law. There she saw that Chaman Lal had taken liquor and was abusing without taking the name of anybody. In cross-examination, she had stated that she did know the date, month or year, as she was illiterate. She has also stated that the position of her mind was not normal. She had also stated that she and her husband had not gone to see the daughter. On the third day, they have gone to the house of their daughter.

13. P.W.7 is the Mehanti and is the mother of Chaman Lal. She had stated that the deceased Raj Kumari was a very good girl and she was living along with them. She has not supported the prosecution case and declared hostile by the prosecution.

14. P.W.8 is Mahant Ram, who has stated that he had never seen that the accused had beaten the Raj Kumari nor he had seen that she was harassed and Raj Kumari had never complained to him. He was also declared hostile by the prosecution, as he has not supported the prosecution, as he has not supported the prosecution case.

15. P.W.9 is Dr. R.N. Singh who has stated that on 16.8.1983, he was posted as Medical Officer in Doon Hospital. On that day at 1:00 P.M., he had conducted the autopsy of the deceased Raj Kumari. The body of the deceased was brought to him by constable 702 Gajendra Singh and Constable 455

Madan Singh, P.S. Sahaspur. After the autopsy, he made the following symptoms on body of the deceased:-

> *External Examination- The deceased was a young lady. Body stricture was simple. Face and lips were found blue. Entire body also got blue colour. Blood of red colour was coming from the month.*
> *On the back of the elbow of the right hand, several scratches were found in the area of 6 x 3 cm. Eyes were half opened.*
> *Internal Examination – Membrances of the mind were deeply congested. Brain was also congested. Rest o f the part was fine.*
> *On the examination of the chest, pleura were found congested. Larynx, Trachea, Bronchi, right and left lungs and pericardium were found congested. Heart was full with blood.*
> *On the internal examination of Oesophagus, Abdomen, Bladder, small intestine, internal potion of large intestine, gall bladder and pancreas were found congested.*
> *In the contents of the bladder, one ounce deeper contents which were of dirty colour was found.*
> *The deceased was not pregnant.*

16. The doctor has also proved the post-mortem report i.e. Ex.Ka-5. He has preserved the Visra because the cause of death could not be ascertained without the report of Bisra. He has also stated that the death of Raj Kumari may be caused on 15.08.1983 between 11:30 A.M. to 4:00 P.M.

17. P.W. 10 is Jagdish Prasad, Head Moharrir. He is the formal witness.

18. P.W. 11 is the Bhupendra Bahadur Singh Mallar, sub-inspector who has investigated the matter and he has submitted the charge sheet Ex.Ka 14 after completing the Investigation against the accused/respondents. In the cross-examination, this witness has stated " यह सही है कि विवेचना के दौरान मुझे कोई ऐसी

चिट्ठी कागज आदि ऐसे प्राप्त नहीं हुआ जिससे यह सिद्ध होता हो कि अभियुक्तगण ने मृत को आत्महत्या के लिए प्रेरित किया।''

19. P.W. 12 is the Shiv Kumar, sub-Inspector who has prepared the Panchayatnama on 15.8.1983.

20. After recording the statement of the prosecution witnesses, the statements of the accused persons under Section 313 Cr.P.C. was recorded where the accused persons have denied the allegations made against them and they have stated that they have been falsely implicated in this case. In support of their case. They have examined D.W. 1 Banarsi who had stated that he knows Diwan Chandra and Bali Ram. He had also stated that Bali Ram is his uncle and deceased was his sister. He had also stated that about 6 years back and before her marriage, she had taken the poison twice and her mind became abnormal.

21. D.W.2 is the Shanti Prasad. He had also stated that the daughter of Bali Ram was married with Mulak Raj, son of Chaman Lal and he is the neighbourer of the Chaman Lal. He has also stated that Rajo was not beaten by Chaman Lal and his wife. He also stated that the deceased was never harassed by them and the accused had kept the deceased Rajo with love and affection.

22. From the evidence discussed above, it is clear that P.W.1 Diwan Chand who was the brother of the deceased, his testimony is not supported by the evidences of P.W.3 Mishri Lal, P.W. 4 Damodar Das, P.W. 7 Smt. Mahanti, P.W. 8 Mahant Ram. His statement finds support only from the statement of his

mother Smt. Barfi Devi P.W.6, but the statement of Smt. Barfi Devi is also not reliable and natural and trustworthy as she has stated that her mind was not normal on the date of the incident. The statement of Bali Ram is also not trustworthy, as not a single witness was produced which was taken by him for the panchayat. Even otherwise, from the statement of the father Bail Ram and mother Burfi Devi, it creates a doubt itself as to whether the incident was happened as stated and the circumstances of the case were not proved due to which the deceased Raj Kumari has committed suicide, and from the statement of Diwan Chand, Bail Ram, Burfi Devi, it was not established beyond reasonable doubt that the accused/ respondents had created such circumstances due to which the Raj Kumar committed suicide. The witnesses Mishri Lal, Damodar Dass, Mehanti Devi and Mahant Ram had not supported the prosecution case and they have been declared hostile. It is pertinent to mention here that the Investigation Officer who was examined as P.W.11, Bhupendra Singh Malra, he has stated in the cross-examination that it is correct that during the investigation, he has not found any paper or other thing which may prove that the accused have instigated the deceased Raj Kumari for committing suicide. From the statement of the I.O. Bhupendra Singh Mala, P.W.11, it is also clear that he did not find any evidence against the accused/ respondents for the offence punishable under Sections 306 and 498-A I.P.C.

23. Learned Additional Sessions Judge after appreciating the evidence have rightly come to the conclusion that there is no case made out against the

accused/respondents under sections 306 and 498-A I.P.C. and I also agree with the judgment and order dated 10.05.1985 passed by learned Additional Sessions Judge, Dehradun. I do not find any irregularity or illegality in the above said judgment. The prosecution story is completely doubtful and is not proved beyond reasonable doubt against the respondents.

24. In view of the above, the appeal is devoid of merit and is hereby dismissed.

(Dharam Veer, J.)

June 05,2007
Rajeev Dang